

Complaint

IN THE MATTER OF

ELLERMAN MANUFACTURING CO., ET AL.

CONSENT ORDER, ETC., IN REGARD TO THE ALLEGED VIOLATION OF
THE FEDERAL TRADE COMMISSION, THE WOOL PRODUCTS LABELING,
AND THE TEXTILE FIBER PRODUCTS IDENTIFICATION ACTS*Docket C-1761. Complaint, July 13, 1970—Decision, July 13, 1970*

Consent order requiring a Chicago, Ill., manufacturer of men's and boys' athletic clothing, including award jackets, to cease misbranding its woolen products, falsely advertising its textile fiber products, and failing to maintain required records.

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, the Textile Fiber Products Identification Act and by virtue of the authority vested in it by said Acts, the Federal Trade Commission, having reason to believe that Ellerman Manufacturing Co., a partnership, and Raymond H. Ellerman and Harry F. Ellerman, individually and as copartners trading as Ellerman Manufacturing Co., and Helen Ellerman, individually and as manager of Ellerman Manufacturing Co., hereinafter referred to as respondents, have violated the provisions of said Acts and the Rules and Regulations promulgated under the Wool Products Labeling Act of 1939 and the Textile Fiber Products Identification Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent Ellerman Manufacturing Co. is a partnership with its office and principal place of business located at 1844 West 21st Street, Chicago, Illinois.

Respondents Raymond H. Ellerman and Harry F. Ellerman are individuals and copartners trading as Ellerman Manufacturing Co. Their address is the same as that of said partnership.

Respondent Helen Ellerman is manager of Ellerman Manufacturing Co. She cooperates in formulating the acts, practices and policies of Ellerman Manufacturing Co. Her address is the same as that of Ellerman Manufacturing Co.

Respondents are engaged in the manufacturing of men's and boys' athletic clothing, including award jackets.

PAR. 2. Respondents now, and for some time last past, have manufactured for introduction into commerce, introduced into commerce, sold, transported, distributed, delivered for shipment, shipped, and offered for sale, in commerce, as "commerce" is defined in the Wool Products Labeling Act of 1939, wool products as "wool product" is defined therein.

PAR. 3. Certain of said wool products were misbranded by the respondents within the intent and meaning of Section 4(a)(1) of the Wool Products Labeling Act of 1939 and Rules and Regulations promulgated thereunder, in that they were falsely and deceptively stamped, tagged, labeled, or otherwise identified with respect to the character and amount of the constituent fibers contained therein.

Among such misbranded wool products, but not limited thereto, were athletic coats, stamped, tagged, labeled, or otherwise identified by respondents as "reprocessed Wool," whereas in truth and in fact, said products contained substantially different fibers and amounts of fibers than represented.

PAR. 4. Certain of said wool products were further misbranded by respondents in that they were not stamped, tagged, labeled, or otherwise identified as required under the provisions of Section 4(a)(2) of the Wool Products Labeling Act of 1939 and in the manner and form as prescribed by the Rules and Regulations promulgated under said Act.

Among such misbranded wool products, but not limited thereto, were wool products, namely athletic coats, with labels which failed to disclose:

(a) The percentage of the total fiber weight of the said wool product, exclusive of ornamentation not exceeding 5 percent of the total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool when said percentage by weight of such fiber was 5 percent or more; and (5) the aggregate of all other fibers.

(b) The name or other identification issued and registered by the Commission of the manufacturer of the said wool product or of one or more persons subject to Section 3 of the Wool Products Labeling Act of 1939 with respect to the said wool product.

PAR. 5. Certain of said wool products were misbranded in violation of the Wool Products Labeling Act of 1939 for the reason that they were not labeled in accordance with the Rules and Regulations

promulgated under the Wool Products Labeling Act of 1939, in the following respects:

1. Required information as to fiber content was not set forth in such a manner as to separately show the fiber content of each section of wool products containing two or more sections, in violation of Rule 23(b) of the aforesaid Rules and Regulations.

2. The fiber content of linings which contained, purported to contain, or were represented as containing wool, reprocessed wool, or reused wool, which linings were used in wool products, namely coats, was not set forth separately and distinctly as a part of the required information on the stamps, tags, labels or other marks of identification of such wool products, in violation of Rule 24(a)(1) of the aforesaid Rules and Regulations.

PAR. 6. The acts and practices of the respondents as set forth above, were, and are, in violation of the Wool Products Labeling Act of 1939 and the Rules and Regulations promulgated thereunder, and constituted, and now constitute, unfair methods of competition and unfair and deceptive acts or practices, in commerce within the meaning of the Federal Trade Commission Act.

PAR. 7. Respondents are now, and for some time last past have been engaged in the introduction, delivery for introduction, manufacture for introduction, sale, advertising, and offering for sale, in commerce, and in the transportation or causing to be transported in commerce, and in the importation into the United States, of textile fiber products; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, textile fiber products, which have been advertised or offered for sale in commerce; and have sold, offered for sale, advertised, delivered, transported and caused to be transported, after shipment in commerce textile fiber products, either in their original state or contained in other textile fiber products; as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act.

PAR. 8. Certain of said textile fiber products were falsely and deceptively advertised in that respondents in making disclosures or implications as to the fiber content of such textile fiber products in written advertisements used to aid, promote, and assist, directly or indirectly, in the sale or offering for sale of said products, failed to set forth the required information as to fiber content as specified by Section 4(c) of the Textile Fiber Products Identification Act and in the manner and form prescribed by the Rules and Regulations promulgated under said Act.

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Among such textile fiber products, but not limited thereto, were articles of wearing apparel which were falsely and deceptively advertised by means of a "catalogue" distributed by respondents throughout the United States, in that disclosures or implications as to the fiber content of said articles of wearing apparel were made therein without the true generic names of the fibers contained in the articles of wearing apparel being set forth in said catalogue.

PAR. 9. By means of the aforesaid advertisements and others of similar import and meaning not specifically referred to herein, respondents falsely and deceptively advertised textile fiber products in violation of the Textile Fiber Products Identification Act in that said textile fiber products were not advertised in accordance with the Rules and Regulations promulgated thereunder in the following respects:

A. Fiber trademarks were used in advertising textile fiber products without full disclosure of the fiber content information required by the said Act and the Rules and Regulations thereunder in at least one instance in said advertisement, in violation of Rule 41(a) of the aforesaid Rules and Regulations.

B. Fiber trademarks were used in advertising textile fiber products containing more than one fiber and such fiber trademarks did not appear in immediate proximity and conjunction with the generic names of the fibers in plainly legible type or lettering of equal size or conspicuousness in violation of Rule 41(b) of the aforesaid Rules and Regulations.

C. Fiber trademarks were used in advertising textile fiber products containing only one fiber, and such fiber trademark did not appear, at least once, in immediate proximity and conjunction with the generic name of the fiber, in plainly legible and conspicuous type, in violation of Rule 41(c) of the aforesaid Rules and Regulations.

PAR. 10. Respondents have failed to maintain proper records showing the fiber content of the textile fiber products manufactured by them in violation of Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Rules and Regulations promulgated thereunder.

PAR. 11. The acts and practices of the respondents as set forth in Paragraphs Eight through Ten were, and are, in violation of the Textile Fiber Products Identification Act and the Rules and Regulations promulgated thereunder and constituted, and now constitute unfair methods of competition and unfair or deceptive acts or practices, in commerce, under the Federal Trade Commission Act.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Bureau of Textiles and Furs proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act, the Wool Products Labeling Act of 1939, and the Textile Fiber Products Identification Act; and

The respondents and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Acts, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of thirty (30) days, now in further conformity with the procedure prescribed in § 2.34(b) of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Ellerman Manufacturing Co. is a partnership with its office and principal place of business located at 1844 West 21st Street, Chicago, Illinois.

Respondents Raymond H. Ellerman and Harry F. Ellerman are individuals and copartners trading as Ellerman Manufacturing Co. Their address is the same as that of the said partnership.

Respondent Helen Ellerman is manager of Ellerman Manufacturing Co. She cooperates in formulating the acts, practices and policies of said partnership. Her address is the same as that of Ellerman Manufacturing Co.

Respondents are engaged in the manufacture of men's and boys' athletic clothing, including award jackets.

2. The Federal Trade Commission has jurisdiction of the subject

matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

It is ordered, That respondents Ellerman Manufacturing Co., a partnership, and Raymond H. Ellerman and Harry F. Ellerman, individually and as copartners trading as Ellerman Manufacturing Co., and Helen Ellerman, individually and as manager of Ellerman Manufacturing Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, manufacture for introduction, into commerce, or the offering for sale, sale, transportation, distribution, delivery for shipment or shipment, in commerce, of wool products, as "commerce" and "wool product" are defined in the Wool Products Labeling Act of 1939, do forthwith cease and desist from misbranding such products by:

1. Falsely and deceptively stamping, tagging, labeling, or otherwise identifying such products as to the character or amount of the constituent fibers contained therein.

2. Failing to securely affix to, or place on, each such product a stamp, tag, label, or other means of identification showing in a clear and conspicuous manner each element of information required to be disclosed by Section 4(a)(2) of the Wool Products Labeling Act of 1939.

3. Failing to set forth required information on labels attached to wool products consisting of two or more sections of different fiber content, in such a manner as to show the fiber content of each section in all instances where such marking is necessary to avoid deception.

4. Failing to set forth the fiber content of linings which are used in wool products, separately and distinctly as part of the required information on the stamps, tags, labels or other marks of identification affixed to such wool products if such linings contain, purport to contain or are represented as containing wool, reprocessed wool or reused wool.

It is further ordered, That respondents Ellerman Manufacturing Co., a partnership, and Raymond H. Ellerman and Harry F. Ellerman, individually and as copartners trading as Ellerman Manufacturing Co., and Helen Ellerman, individually and as manager of Ellerman Manufacturing Co., and respondents' representatives, agents and employees, directly or through any corporate or other device, in connection with the introduction, delivery for introduction,

manufacture for introduction, sale, advertising, or offering for sale, in commerce, or the transportation or causing to be transported in commerce, or the importation into the United States, of any textile fiber product; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, of any textile fiber product which has been advertised or offered for sale in commerce; or in connection with the sale, offering for sale, advertising, delivery, transportation, or causing to be transported, after shipment in commerce, of any textile fiber product, whether in its original state or contained in other textile fiber products, as the terms "commerce" and "textile fiber product" are defined in the Textile Fiber Products Identification Act, do forthwith cease and desist from:

A. Falsely and deceptively advertising textile fiber products by:

1. Making any representations, directly or by implication, as to fiber content of any textile fiber product in any written advertisement which is used to aid, promote, or assist, directly or indirectly, in the sale or offering for sale of such textile fiber product, unless the same information required to be shown on the stamp, tag, label, or other means of identification under Section 4(b)(1) and (2) of the Textile Fiber Products Identification Act is contained in the said advertisement, except that the percentages of the fibers present in the textile fiber product need not be stated.

2. Using a fiber trademark in an advertisement without a full disclosure of the required content information in at least one instance in the said advertisement.

3. Using a fiber trademark in advertising textile fiber products containing more than one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

4. Using a fiber trademark in advertising textile fiber products containing only one fiber without such fiber trademark appearing in the required fiber content information in immediate proximity and conjunction with the generic name of the fiber in plainly legible type or lettering of equal size and conspicuousness.

B. Failing to maintain and preserve records of fiber content of textile fiber products manufactured by them, as required by

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Section 6(a) of the Textile Fiber Products Identification Act and Rule 39 of the Regulations thereunder.

It is further ordered, That the respondents herein shall, within sixty (60) days after service upon them of this order, file with the Commission a report in writing setting forth in detail the manner and form in which they have complied with this order.